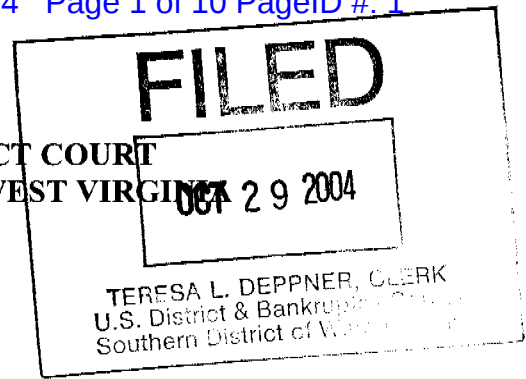


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD



HENRY (NMN) MARTIN, JR.

Plaintiff,

v.

CIVIL ACTION NO.: 1:04-1169

NORFOLK SOUTHERN RAILWAY COMPANY
AKA//: NORFOLK SOUTHERN CORPORATION,

Defendant.

NOTICE OF REMOVAL

Comes now the Defendant, Norfolk Southern Railway Company, ("NSRC") by and through counsel, and gives notice that on the 29th day of October, 2004 the Defendant did remove a civil action pending in the Circuit Court of McDowell County, West Virginia, styled "Henry (NMN) Martin, Jr. v. Norfolk Southern Railway Company aka//: Norfolk Southern Corporation, Civil Action No. 04-C-223-M" to the United States District Court for the Southern District of West Virginia at Bluefield. In accordance with the provisions of 28 U.S.C. § 1446 (1998), the Defendant states as follows:

1. That Norfolk Southern Railway Company is the Defendant in a civil action filed on or about September 30, 2004, in the Circuit Court of McDowell County, West Virginia styled as above. Pursuant to the provisions of Section 1441 and 1446 of Title 28 of the United States Code, NSRC removes this action to the United States District Court for the Southern District of West Virginia at Bluefield, which is the judicial district and division in which the action is pending;

2. That the Plaintiff served upon the Defendant through the office of the West Virginia Secretary of State a copy of the Complaint and Summons on October 4, 2004;
3. That CSXT has until November 3, 2004, to Answer or otherwise plead to the Complaint;
4. That the action is of a civil nature at law, whereby Plaintiff seeks compensatory damages arising from an alleged injury occurring on or about February 25, 2003;
5. That there is complete diversity of citizenship between the Plaintiff and the Defendant in this action;
6. That at the time of the filing of the Complaint the Plaintiff was a citizen of the State of West Virginia;
7. That at the time of the filing of the Complaint, the Defendant, NSRC was not a citizen of West Virginia as it was a corporation organized and incorporated under the laws of the Commonwealth of Virginia with its principal place of business located in Norfolk, Virginia;
8. That as of the filing of this Notice, the citizenship of the respective parties is unchanged;
9. That the amount in controversy exceeds, exclusive of interests and costs, the sum of Seventy-five Thousand dollars (\$75,000.00);
10. That this Court would have had original subject matter jurisdiction of this action under the provisions of 28 U.S.C. §1332 if the action had originally

been brought in federal court. Removal is, therefore, proper under 28 U.S.C. § 1441(a);

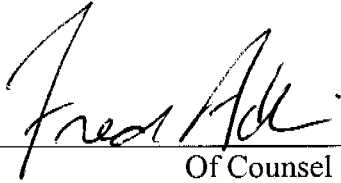
11. That removal of this case on the basis of diversity of citizenship is not precluded by the provisions of Section 1441(b) of Title 28 of the United States Code because none of the parties in interest properly joined and served as a defendant is a citizen of the State of West Virginia, the State in which this action was brought;

12. That this Notice of Removal is timely under Section 1446(b) of Title 28 of the United States Code because the Plaintiff's Complaint in this action was served upon the Defendant on October 3, 2004. This Notice of Removal is filed within 30 days of receipt of the Plaintiff's Complaint and within one year of the commencement of the action, so that it is timely filed under 28 U.S.C. §1446(b);

13. That attached to this Notice of Removal as *Exhibit A* is the Complaint filed herein and the docket sheet of the Circuit Court of McDowell County, West Virginia evidencing that this action was filed in that court and that the Defendant has not answered;

WHEREFORE, the Defendant submits this Notice of Removal for the consideration of the court herein and hereby gives notice to the Clerk of the Circuit Court of McDowell County, West Virginia, that Removal is hereby effected and that no further action by the Circuit Court shall take place unless this action be remanded by the United States District Court.

NORFOLK SOUTHERN RAILWAY COMPANY

By: 
Of Counsel

Fred Adkins, Esquire
J. David Bolen, Esquire
**HUDDLESTON, BOLEN, BEATTY,
PORTER & COPEN, LLP**
611 Third Avenue
P.O. Box 2185
Huntington, West Virginia 25722-2185
(304) 529-6181

**COUNSEL FOR DEFENDANT,
NORFOLK SOUTHERN RAILWAY COMPANY**

EXHIBIT A

 **COPY**

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA

HENRY (NMN) MARTIN, JR......**PLAINTIFF**

V.S.

CIVIL ACTION NO. 04-C-223-M

**NORFOLK SOUTHERN RAILWAY COMPANY
AKA/ NORFOLK SOUTHERN CORPORATION**.....

DEFENDANT

2004 SEP 30 AM 8:50

FILED & CLERK
CIRCUIT COURT
MCDOWELL COUNTY W. VA.

COMPLAINT

I.

On the 25th day of February, 2003, in McDowell County, West Virginia, the Plaintiff was loading and dropping railroad cars on property that KSI, his employer leased from Norfolk Southern Railway Company, in McDowell County, West Virginia, to-wit:

II.

An employee of Norfolk Southern Railway Company negligently released a railroad car on the railroad track that the Plaintiff, Henry Martin, Jr. was working on which caused the railroad car to travel down the track that the Plaintiff was working on and the railroad car that the employee and Agent of the Defendant released struck the railroad cars that the Plaintiff was working on which caused the Plaintiff to fall across the track that was adjacent to the railroad car that the Plaintiff was working on. The railroad car that was released was loaded with gravel. The Defendant was negligent in the first

place by even putting the railroad car on the track that the Plaintiff was working on and secondly, the Defendant was negligent by releasing the same railroad car that struck the railroad cars that the Plaintiff was working on.

III.

That as a direct result of the railroad car being released by the Defendant, that the Plaintiff was working on was struck by the railroad car loaded with gravel with great force and violence, the Plaintiff's body was violently thrown from the railroad car, causing the Plaintiff to sustain multiple injuries to his back, knee and kidneys.

IV.

The Defendant was negligent in putting the railroad car on the track and by releasing the railroad car.

V.

That as a direct and proximate result of the aforesaid negligence of the Defendant, the Plaintiff, Henry (nmn) Martin, Jr., has sustained numerous injuries, including but not limited to his back, knee and kidneys, which said injuries are permanent in nature.

VI.

That as a result of the aforementioned negligence of the Defendant, the Plaintiff has sustained great mental anguish and will continue to do so, and has incurred medical expenses in excess of Fifteen Thousand Forty-Nine and 60/100 Dollars (\$15,049.60) and

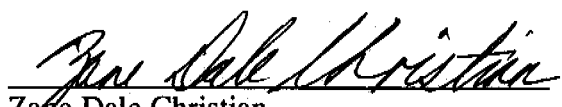
lost wages in excess of Twenty-Seven Thousand Four Hundred Thirty-Six and 05/00 (\$27,436.05).

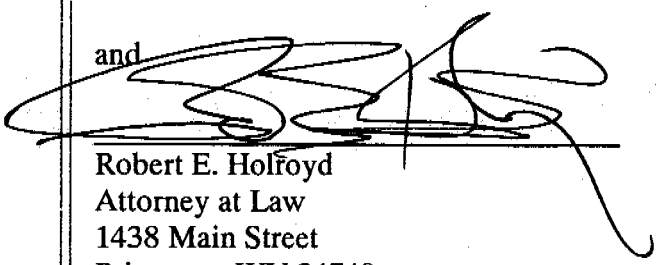
WHEREFORE, your Plaintiff, Henry (nmn) Martin, Jr., prays that on account of the matters and things hereinabove set forth, that she has been damaged in the amount of One Hundred Thousand Dollars (\$100,000.00) for which the said Defendant, Norfolk Southern Railway Company, is liable and for which sum the Plaintiff prays that he may have judgment against the Defendant, with interest and costs of this suit.

PLAINTIFF DEMANDS A JURY TRIAL OF ALL ISSUES OF FACT.

HENRY (NMN) MARTIN, JR.

By Counsel.


Zane Dale Christian
Attorney at Law
548 Virginia Avenue
Bluefield, VA 24605

and

Robert E. Holroyd
Attorney at Law
1438 Main Street
Princeton, WV 24740
WV Bar No: 1773

CASE 04-C-223

MCDOWELL

HENRY MARTIN, JR.

vs. NORFOLK SOUTHERN RAILWAY CO

LINE	DATE	ACTION
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1	09/30/04	COMPLAINT FILED, SUMMONS ISSUED, 30 DAYS SECRETARY OF STATE.
2	10/08/04	SUMMONS AND GREEN RETURN RECEIPT CARD AS TO ACCEPTANCE OF SER-
3		VICE BY THE SECRETARY OF STATES OFFICE ON 10/04/04 OBO NORFOLK
4		SOUTHERN RAILWAY COMPANY FILED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD**

HENRY (NMN) MARTIN, JR.

Plaintiff,

v.

CIVIL ACTION NO.:

NORFOLK SOUTHERN RAILWAY COMPANY
AKA//: NORFOLK SOUTHERN CORPORATION,

Defendant.


CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the forgoing "*Notice of Removal*" upon the following individuals by depositing a true copy thereof in the regular manner in the United States Mail, postage prepaid, at Huntington, West Virginia, on the 29th day of October, 2004.

Zane Dale Christian, Esquire
548 Virginia Avenue
Bluefield, VA 24605

Robert E. Holroyd, Esquire
1438 Main Street
Princeton, WV 24740

Sally Childers, Clerk
Circuit Court of McDowell County
90 Wyoming Street STE 111
Welch, WV 24801



A handwritten signature, "Fred Adli", is written in black ink over a horizontal line.